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No. 89-1149

Supreme Court, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1989

**COY R. GROGAN and
JOHN H. HENSON,**
Petitioners,

vs.

FRANK J. GARNER, JR.,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

RESPONDENT'S BRIEF IN OPPOSITION

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Counsel for Respondent

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The Respondent, Frank J. Garner, Jr., respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Eighth Circuit's opinion in this case. That opinion is reported at 881 F.2d 579.

REASON WHY THE PETITION SHOULD BE DENIED

1. There is no conflict in the decision of the Courts of Appeals.

Both the Eighth Circuit opinion in this case and the Petition for Writ of Certiorari conclusively demonstrate that the Eighth Circuit is following what it terms the majority rule followed by five of the circuits in requiring a clear and convincing standard of proof for fraud under Section 523(a) of the Bankruptcy Code.

However, the alleged conflicting decision of the Fourth Circuit, Combs v. Richardson, 838 F.2d 112 (4th Cir. 1988), can and should be distinguished on its facts, in that it: (1) dealt with a willful and malicious injury under Section 523(a)6 rather than a fraud under Section 523(a)2; and, (2) the Court of Appeals in Combs was satisfied with the review by the Bankruptcy Court and the Court of Appeals in the case at bar was not.

CONCLUSION

Accordingly, inasmuch as the Court of Appeals has followed the standard accepted by five circuits, and the decision of the Court of Appeals for the Fourth Circuit can be distinguished on its facts, this Court should decline to grant certiorari.

Respectfully submitted,

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